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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

VICTOR PEREZ, individually, and on behalf of
all others similarly situated,

Plaintiff,

v.

THE BIG COMPANY, INC. DBA CAPO
FIRESIDE, a California corporation; and DOES
1 through 10, inclusive,

Defendants.

Case No. CIVDS 2009691

CLASS ACTION

*[Assigned for all purposes to Hon. David
Cohn, Dept. S26]*

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

*[Filed with Memorandum of Points and
Authorities the Declaration of Justin F.
Marquez, and Proposed Order]*

PRELIMINARY APPROVAL HEARING

Date: September 22, 2021

Time: 9:00 a.m.

Dept: S-26

1 The Court has before it Plaintiff Victor Perez’s (“Plaintiff”) Motion for Preliminary
2 Approval of Class Action Settlement. Having reviewed the Motion for Preliminary Approval
3 of Class Action Settlement, the Declaration of Justin F. Marquez, the Stipulation for Class
4 Action Settlement (which is referred to here as the “Settlement Agreement”), and good cause
5 appearing, the Court hereby finds and orders as follows:

6 1. The Court finds on a preliminary basis that the Settlement Agreement appears to
7 be fair, adequate, and reasonable and therefore meets the requirements for preliminary
8 approval. The Court grants preliminary approval of the Settlement and the Settlement Class
9 based upon the terms set forth in the Settlement Agreement between Plaintiff Victor Perez and
10 Defendant The BIG Company, Inc. dba CAPO Fireside. (“Defendant”), attached to the
11 Declaration of Justin F. Marquez in Support of Plaintiff’s Motion for Preliminary Approval of
12 Class Action Settlement as Exhibit 1.

13 2. The Settlement falls within the range of reasonableness of a settlement which
14 could ultimately be given final approval by this Court, and appears to be presumptively valid,
15 subject only to any objections that may be raised at the Final Approval Hearing and final
16 approval by this Court. The Court notes that Defendant has agreed to create a common fund
17 of \$575,000.00 to cover (a) settlement payments to class members who do not validly opt out;
18 (b) a \$30,000.00 payment to the State of California, Labor & Workforce Development Agency
19 for its share of the settlement of claims for penalties under the Private Attorneys General Act,
20 with 75% of which (\$22,500) will be paid to the LWDA and 25% (\$7,500) will be paid to
21 eligible members of the PAGA Class; (c) Class Representative service payment of up to
22 \$7,500.00 for Plaintiff Victor Perez; (d) Class Counsel’s attorneys’ fees, not to exceed 33-
23 1/3% of the Gross Settlement Amount (\$191,666.66), and up to \$25,000.00 in costs for actual
24 litigation expenses incurred by Class Counsel; and (e) Settlement Administration Costs of up
25 to \$7,500.

26 3. The Court preliminarily finds that the terms of the Settlement appear to be
27 within the range of possible approval, pursuant to California Code of Civil Procedure § 382
28 and applicable law. The Court finds on a preliminary basis that: (1) the settlement amount is

1 fair and reasonable to the class members when balanced against the probable outcome of
2 further litigation relating to class certification, liability and damages issues, and potential
3 appeals; (2) significant informal discovery, investigation, research, and litigation have been
4 conducted such that counsel for the parties at this time are able to reasonably evaluate their
5 respective positions; (3) settlement at this time will avoid substantial costs, delay, and risks
6 that would be presented by the further prosecution of the litigation; and (4) the proposed
7 settlement has been reached as the result of intensive, serious, and non-collusive negotiations
8 between the Parties with the assistance of a well-respected class action mediator. Accordingly,
9 the Court preliminarily finds that the Settlement Agreement was entered into in good faith.

10 4. A final fairness hearing on the question of whether the proposed settlement,
11 attorneys' fees and costs to Class Counsel, payment to the State of California, Labor &
12 Workforce Development Agency for its share of the settlement of claims for penalties under
13 the Private Attorneys General Act, and the class representative's enhancement award should
14 be finally approved as fair, reasonable and adequate as to the members of the class is hereby
15 set in accordance with the Implementation Schedule set forth below.

16 5. The Court provisionally certifies for settlement purposes only the following
17 class (the "Settlement Class"): "All current and former employees who worked in a non-
18 exempt or hourly-paid position for The BIG Company, Inc. dba CAPO Fireside within the
19 state of California during the Class Period."

20 6. The Settlement Period means the period from May 29, 2016 through July 19,
21 2021, or the date when the Court grants preliminary approval of this settlement, whichever is
22 earlier.

23 7. The Court finds, for settlement purposes only, that the Settlement Class meets
24 the requirements for certification under California Code of Civil Procedure § 382 in that: (1)
25 the Settlement Class Members are so numerous that joinder is impractical; (2) there are
26 questions of law and fact that are common, or of general interest, to all Settlement Class
27 Members, which predominate over individual issues; (3) Plaintiff's claims are typical of the
28 claims of the Settlement Class Members; (4) Plaintiff and Class Counsel will fairly and

adequately protect the interests of the Settlement Class Members; and (5) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

8. The Court appoints as Class Representative, for settlement purposes only, Plaintiff Victor Perez. The Court further preliminarily approves Plaintiff's ability to request an incentive award up to \$7,500.00.

9. The Court appoints, for settlement purposes only, Wilshire Law Firm, PLC as Class Counsel. The Court further preliminarily approves Class Counsel's ability to request attorneys' fees of up to one-third of the Total Settlement Amount (\$191,666.66), and costs not to exceed \$25,000.00.

10. The Court appoints Phoenix Class Action Administration Solutions as the Settlement Administrator with reasonable administration costs estimated not to exceed \$7,500.

11. The Court approves, as to form and content: (1) the Class Notice, attached as Exhibit A to the Settlement Agreement; and (2) the Workweek Dispute Form, attached as Exhibit A to the Settlement Agreement (collectively, "Notice Packets"). The Court finds on a preliminary basis that plan for distribution of the Notice Packets to Settlement Class Members satisfies due process, provides the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.

12. The parties are ordered to carry out the Settlement according to the terms of the Settlement Agreement.

13. Any class member who does not timely and validly request exclusion from the settlement may object to the Settlement Agreement.

14. The Court orders the following Implementation Schedule:

Defendant to provide Class List to the Settlement Administrator	October 6, 2021
Settlement Administrator to mail the Notice Packets	October 20, 2021
Response Deadline	December 20, 2021

1	Deadline to Respond to Objections	January 3, 2021
2		
3	Deadline for Administrator to Submit Report	January 3, 2021
4	Deadline to file Motion for Final Approval,	
5	Request for Attorney's Fees and Costs, and	January 21, 2022
6	Service Award to Plaintiff	
7	Final Approval Hearing	February 15, 2022

8 15. The Court further ORDERS that, pending further order of this Court, all
9 proceedings in this lawsuit, except those contemplated herein and in the settlement, are stayed.

10 **IT IS SO ORDERED.**

11
12
13 DATE:

Hon. David Cohn
San Bernardino County Superior Court

PROOF OF SERVICE

Victor Perez v. The Big Company, Inc. dba Capo Fireside
CIVDS 2009691

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to this action. My business address is 3055 Wilshire Blvd., 12th Fl., Los Angeles, California 90010. My electronic service address is minjee@wilshirelawfirm.com. On **August 30, 2021**, I served the foregoing document described as:

[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

[✓] **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known email address or e-mail of record in this action.

[✓] **BY UPLOAD:** I hereby certify that the documents were uploaded by my office to the State of California Labor and Workforce Development Agency Online Filing Site.

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Attorneys for Defendant The Big Company, Inc.
dba Capo Fireside

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this **August 30, 2021**, at Los Angeles, California.

Min Jee Kim

Type or Print Name



Signature